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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 3932
12	ELLIOT MILES STONE 42451 15th Street West
13	Lancaster, CA 93534 Pharmacy Technician License No. TCH A C C U S A T I O N
14	82587
15	Respondent.
16	Complainant alleges:
17	PARTIES
18	1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20	2. On or about March 28, 2008, the Board of Pharmacy issued Pharmacy Technician
21	License Number TCH 82587 to Elliot Miles Stone ("Respondent"). The Pharmacy Technician
22	License was in full force and effect at all times relevant to the charges brought herein and will
23	expire on July 31, 2011, unless renewed.
24	JURISDICTION
25	3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
26	Consumer Affairs, under the authority of the following laws. All section references are to the
27	Business and Professions Code ("Code") unless otherwise indicated.
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STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . ."

- 6. Section 4059, subdivision (a), of the Code provides: "A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."
- 7. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.
 - 8. Section 4301 states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

• • •

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs..."

CONTROLLED SUBSTANCE-DANGEROUS DRUGS

- 9. Marijuana is designated as a Schedule I controlled substance by Health and Safety Code section 11054(d)(13) and is a dangerous drug pursuant to Business and Professions Code section 4022.
 - 10. Section 11357 (b) of the Health and Safety Code states, in pertinent part,

"Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100)."

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Self Administration of Marijuana)

- 12. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that Respondent self administered marijuana to the extent or in a manner as to be dangerous or injurious to himself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs his ability to conduct with safety to the public, the practice authorized by the license. The basis of the conduct is as follows:
- 13. From June 23, 2008, through September 25, 2009, Respondent was employed as a pharmacy technician at Wal-Mart in Lancaster, California.
- 14. On or about September 22, 2009, Respondent submitted a biological sample for drug screening to Wal-Mart.
 - 15. Drug analysis revealed that Respondent had consumed marijuana.
 - 16. Respondent did not report to work subsequent to providing the biological sample.

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SECOND CAUSE FOR DISCIPLINE

(Violate Law Regulating Controlled Substances)

17. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code for unprofessional conduct, in that Respondent violated a law regulating controlled substances. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 13 though 16, inclusive, above, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. Respondent is subject to disciplinary action under section 4301 of the Code for unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 13 though 16, inclusive, above, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 1. Revoking or suspending Pharmacy Technician License Number TCH 82587, issued to Elliot Miles Stone;
- 2. Ordering Elliot Miles Stone to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: <u>5/18/11</u>

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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